IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE M.N.KRISHNAN

MONDAY, THE 3RD DECEMBER 2007 / 12TH AGRAHAYANA 1929

WP(C).No. 34825 of 2007(U)

OS.522/2006 of PRL.M.C.,ERNAKULAM
.....

PETITIONER:

ANTONY PAUL, SON OF PAUL @ POULO,
AGED 63, PUTHUSSERY HOUSE, CHERANELLORE DESOM,
KANAYANNUR TALUK.

BY ADV. SRI.K.C.CHARLES

RESPONDENTS:
----

1. **PAULSON @ POLACHAN, S/O.PAUL @ PAULO,**
   AGED 50, WORKING ABROAD, PUTHUSSERY HOUSE,
   CHERANELLORE, CHERANELLORE VILLAGE,
   CHERANELLOOR P.O., KOCHI-34, KANAYANNUR TALUK,
   NOW AT PUTHUSSERY HOUSE, PALARIVATTOM P.O.,
   ERNAKULAM.

2. **C.J.THOMAS, SON OF JOSEPH,**
   AGED 46, CHAKIATH HOUSE, CHERANELLOOR,
   KOCHI-24.

BY

THIS WRIT PETITION (CIVIL) HAVING COME UP FOR ADMISSION ON 03/12/2007, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

M.N. KRISHNAN, J.

= = = = = = = = = = = = = = = =

W.P.C. NO. 34825 OF 2007

= = = = = = = = = = = = = = = =

Dated this the 3rd day of December, 2007.

J U D G M E N T

This writ petition is preferred against the order in I.A.7003/07 and I.A.7559/07. I.A.7003/07 is filed by the 2nd defendant to set aside the order dated 6.7.07 in I.A.5031/07 and I.A.7559/07 is filed by the plaintiff to remit the Commissioner's plan and report. The Court after a consideration of the entire materials dismissed both the interim applications. It is against that order the present writ petition is filed. The suit is one for a permanent injunction with respect to plaint 'C' schedule property. A Commissioner was appointed in the matter. The Commissioner had visited the property with the assistance of the Taluk Surveyor and demarcated the properties. Everything depends upon the extent of the property that the parties are entitled to and that will be a guiding factor for fixing the boundary between the properties. A schedule which belongs to the plaintiff is

situated on the western side and B schedule which belongs to the 2nd defendant is on the eastern side. To the east of B schedule property there is a public road. In the document side measurements are also given. As far as the plaint is concerned side measurements are north 25.4 links, east 26.9 links, south 25.4 links and west 30.8 links. So far as the defendant's property is concerned its side measurements are north 25.7 links, east, 22.8 links, south 29.1 links and west 26.9 links. This was measured by the Commissioner. As per the document the extent shown is 18 cents for the plaintiff and 15 cents for the defendant. If the side measurements are calculated then the plaintiff will have 18.062 cents and the defendant 16.285 cents. The Court below found that there is difference between extent as well as the side measurements. The side measurements have to be given more weight. The Court also found that on the eastern side of A schedule, the eastern owner has constructed a granite basement and therefore there cannot be any dispute to the west of granite basement. The learned counsel for the writ

petitioner has brought to my notice a decision of this Court reported in ***Krishnamurthi Iyer v. Janaki Amma (1957 KLT 886***). In the said decision this Court held that when there is a conflict between area and the boundaries the boundaries will prevail. The Court further held that when it is manifestly clear that the intention is to give only a particular extent, it will prevail. Here, the real dispute is not between the boundaries and the extent but between the calculation of the extent on the basis of the side measurements. When side measurements of all the sides are given in a document it is the some total of that which will govern the field and not a mere statement regarding the extent. So, when the parties enter into a document the side measurements are given it is an acid test for determining what is the property conveyed. If the evidence is otherwise it cannot be served by remitting the Commissioner's plan and report and the only remedy available for the party is to adduce evidence. Therefore, I do not find any merit in the petition. Hence it is dismissed. But I make it clear that the

party shall be permitted to adduce evidence against the Commissioner's report if they choose to do so and the Court shall decide the issue on the basis of the evidence available in the case which will give an introduction regarding the manifest intention of the parties at the time of execution of the document.

The writ petition is disposed of accordingly.

M.N. KRISHNAN, JUDGE.

ul/-